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February 8, 2000

Response to: MM Docket No. 00-10, MM Docket No. 99-292, RM-9260

Establishment of: Class A Television Service

From: James A. Johnson, President, The Apogee Companies, Inc.

Attached is our company's response to the Class A LPTV Implementation NPRM. We are a two market, privately owned Television broadcasting company. We own both a full power and a low power station in Tucson, Arizona, and a low power in Phoenix, Arizona.

We feel particularly qualified to respond due to our ownership of both classes of service in the Tucson market. The implementation of this legislation will allow us to invest more heavily in quality programming that serves our Hispanic audience. We commend the Commission for the in-depth due diligence that this NPRM exhibits. Hopefully the following responses are useful in your determining the best rule making considerations.

Respectfully,

Jim Johnson,

Investment

Management

Communications

Manufacturing

Real Estate

**From:**

**James A. Johnson,  
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**RE:**

**MM Docket No. 00-10  
MM Docket No. 99-292  
RM-9260**

**To:**

**Magalie Roman Salas,  
Office of the Secretary,  
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Commission,  
445 Twelfth St. SW  
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**Comments Submitted  
Feb.8, 2000**

## DISCUSSION

### A. Certification and Application for License

9. The statute does not appear to specifically restrict the continued consideration of granting Class A status to qualifying LPTV stations beyond the initial filing window. However, because the band is crowded already, caution needs to be adhered to if the Commission is going to review such applications. Each license granted permanent status creates more traffic, which can complicate issues such as technical conflicts created by changes such as the digital transition. Resolving these conflicts becomes more and more difficult, as will be referenced later in this response. Flexibility to be able to accommodate existing licensees needs to be retained. Therefore, it is recommended that additional applications only be granted when the applicant is in fact satisfying a segment of a market that is not being served at all by other actual need fulfillment television broadcast programming. It should be the task of the applicant to prove that they are not simply offering a choice to the market, but they are offering the only service to that segment. The Commission must retain the ability to offer technical solutions to existing Class A operators.

### B. Class A Protected Service Area

12. The past history of LPTV and its lack of permanent status created economic restrictions that often limited the viability of providing locally created, needs based programming. Some of these stations in fact filled a community need, such as in ethnic or foreign language programming, although these same stations did not fulfill the locally produced, local issues or local public service programming elements. Instead they imported programming from a country such as Mexico or Central/South America that often provided the only information/entertainment link to a transplanted resident's homeland. LPTV licensees could often only afford to deliver the packaged programming, not that which was locally produced.

The legislation was written with a clause that used the previous 90 days as the benchmark for qualifying programming. Due to the uncertainty to some broadcasters that this legislation would survive the early opposition by the NAB, they may well have been hesitant to invest in local programming. The need has always been there in many of these niche markets, and it continues to be such. Those broadcasters who now can economically invest in their stations with the assurance that their value is protected, and who can prove that their inclusion in permanent status will be filling an otherwise unfulfilled need should be given consideration for Class A status.

The requirements for accepting these applicants should be 1) The need was previously unfilled for economic reasons. 2) The niche has not been served up to this point with the same programming from another source. 3) The applicant is willing to

submit a programming plan that qualifies for acceptance, with the understanding that permanent status can be revoked if the licensee discontinues the required programming. 4) Inclusion in Class A status does not interfere with the coverage or technical quality of any other full service or newly qualified LPTV that qualified under the initial requirements.

For the technical crowding reasons stated in A. 9 above, these stations that do not initially qualify should for the most part only be able to request further consideration during this same filing window. Otherwise, they should be required to prove their need fulfillment ability under a very strict set of requirements, as suggested in 9. Further restrictions might include consideration only if a previous provider has abandoned a niche market, and the applying station will assume the needs of that market.

13. The three exceptions seem to be appropriate, with one possible point of discussion. Should a DTV station who applies to maximize its DTV signal, be allowed to do so if doing such does not add to its own actual target population coverage, and instead restricts the coverage of an LPTV of its ethnic or niche market. An example would be a maximized DTV station that would suddenly restrict a Class A LPTV in a Hispanic area that is primarily populated by non-English speaking Hispanics?
14. The Commission must retain flexibility in being able to resolve conflicting technical issues. This has to be the first consideration. Distance separation alone is not enough of a tool for the Commission to work with. This should also be the case for a Class A that has proposed digital operations. The same order of protection should apply among the various classes of facilities.
16. Modifications to previously accepted Class A status stations, or the inclusion of stations to Class A status that did not originally qualify, should be accepted only with due protection of those properties that can be fully protected from interference. Any variance from this should put the onus on the effecting licensee to resolve the problem by adjusting its own technical parameters to eliminate the interference. There should not be a need for the effected stations to adjust unless it absolutely results in no less distance or quality of signal of the effected station. These requirements are in addition to those stated in 12. above for non-qualifying initial applicants.

#### C. Change Applications

19. Because LPTV stations were created to reach under-served niche markets, their coverage was initially designed to geographically cover these markets as they best could with certain power restrictions. The cap for the maximum output of these transmitters has since been increased to three kilowatts, but there has been no window for these stations to apply to exercise the increase. This needs to be done now in order to maximize the service to these local communities.

20. Class A stations should be grouped under Part 73 rules with exception of the stated coverage restrictions. Permanent status should carry with it the same reporting requirements, public record requirements and programming requirements.
21. *Alternative Eligibility Criteria.* The response in 12 above primarily addresses these issues. There also may be situations where the market is so small that the qualifying requirements of Class A status continues to restrict the economic viability of such. In those cases where the applicant can prove the exclusive fulfillment of needs, but can also prove that the economics of Class A requirements make it prohibitive, it may be appropriate to give consideration to accepting these applicants. Again, the timing of the application, the technical and protection considerations, etc. should be primary factors.

#### E. Common Ownership

22. The CBPA legislation was passed to better serve niche markets. This is not an anti-trust or unfair competition issue, and it is not one of not enough independent voices in the community. Cross ownership should not disqualify these LPTVs.

#### F. Issuance of DTV Licenses to TV Translator and LPTV Stations

23. There are major markets where LPTV stations provide exclusive programming to market segments that are well into double digit percentages of the total population. These segments should have access to DTV service through these Class A stations. The Commission should be prepared to assign digital channels when these stations properly identify and apply for digital locations. The legislation specifically calls for acceptance of these applications, and this is regardless of the full service stations that had not had their construction permit issued when the deadline for DTV pairing was identified. Again, because of the traffic on the digital and analog band, construction permits for LPTV stations that were not issued by April 3, 1997 should also be restricted from obtaining digital pairing. This would eliminate some of the arguments from the effected full service licensees.

#### G. Interim Qualifications

24. The language of the Act referring to stations located between 698 and 806 megahertz appears to be reasonable in the proposed solution to dealing with obtaining Class A status. Class A status and contour protection should be granted at the time that the construction permit for the in-core channel is granted. The earliest possible date should reduce unforeseen conflicts by duplicate applications for the same channel and resulting expensive legal and engineering maneuvers.

#### H. Class A Interference Protection Requirements

#### NTSC TV Protection

29. Continuation of the current standards of protection should be maintained in these proceedings. Original engineering of these LPTVs was designed to protect the Grade B contour of the full service station, and that should not change. LPTVs were able to use the Longley-Rice mapping propagation model to analyze potential interference, and it is an accepted standard for the industry, as are other branded interpretation vehicles.

#### DTV Protection

31. *New DTV Service.* Primary status must be just that. This Act puts these Class A LPTV stations on equal footing with the television services that preceded this Act only when dealing with applicants of any kind that apply for service after the legislation's effective date. The pecking order for all services is clear when issues come forward with existing full service licensees. The already qualified full service properties, licensed for analog or digital, take precedence. If the legislation is intended to assign qualifying Class A LPTVs primary status, then these LPTVs must be protected the same as all other types of primary providers when new applications, submitted after the enactment date, are considered. As stated earlier, the on-going right to convert to Class A, beyond the prescribed window, should have very strict limitations to acceptability. Modifications to accepted Class A LPTVs should also not have to be effected by future DTV applicants.
32. *DTV Maximization.* We believe that a full service station should be required to prove that it is applying to maximize its signal because a newly empowered LPTV station will in fact interfere with their existing coverage and/or quality of signal. We do not object to the station moving its transmission site if it is to resolve the interference issue. The Act refers to "protected against Class A applicants". Either resolving the issue on site or at a new site is acceptable as long as it does not create interference at another full service channel. If the interference solution interferes with the Class A LPTV, that is the protection that was given to the full service properties.
33. We again find this to not be a simple issue. If a DTV is maximizing because there is a window to do so, and because "more" is almost always "better", we believe that consideration does need to be given to the LPTV. If that station's coverage is reduced, as a result of a full service simply getting bigger, we are defeating the intention of the legislation. We are not protecting the LPTV niche broadcaster. If the LPTV is interfering with the full service operator, the Commission must disallow that from happening. But to allow a full service to get bigger at the expense of an LPTV should not be permitted. Replication is fine. Maximization should have to prove that the new signal strength and coverage area is not at the expense of the Class A LPTV.
34. It would seem to be very difficult to reserve spectrum for stations that might move there. This applies to those who may move after the transition period, and those outside the core. Stations outside the core are either late arrivals or they at least knew of their vulnerability. The operators probably paid less for the station because it is

outside the core. It is not unreasonable for them to not be able to reserve space on another in-core channel. The Commission will need flexibility in assigning a band position.

- 36. This should be enforced as written. Again, retain flexibility.
- 37. The response is "yes" on both issues.
- 38. *Protection of LPTV and TV Translators.* With the enactment of the CBPA, we would assume that those LPTVs qualifying for Class A status would now have to be protected by the non-Class A LPTVs and translators, rather than the language that is suggested here. These stations that can qualify for Class A are most likely serving a significant part of the community, and they are more likely to afford the programming economics that created the need for the new status. Therefore, translators and non-qualifying LPTVs should be required to protect these Class A LPTVs, not the reverse.
- 41. The various protection devices for interference have been discussed throughout this response. In summary, 1) Class A LPTV is secondary to full service analog and digital, and should remain so. 2). Non Class A LPTVs and translators should be forced to protect Class A LPTV and full service properties. 3) If a full service is going to maximize its signal, it should not be allowed to do so simply for more coverage if it is doing so at the expense of a Class A LPTV's coverage or signal quality. 4) New Class A applicants who missed the filing window should not be awarded band space that could potentially restrict the FCC's flexibility in dealing with future technical conflicts.

Applicants wishing to modify their facilities should be forced to wait until this round of upgrades and DTV allotments is finished and the Commission can get an accurate understanding of exactly what can be awarded without possibly creating more interference.

#### I. Class A Applications

- 46. Primary status should imply that both forms of service, Class A LPTV and full service stations, would have to protect each other's maximized facilities.
- 47. First come, first served, even with a petition to deny facility in place, does not appear to be a good alternative. Mutual protection on an equal basis eliminates conflicts brought on by conflicting plans. It also is a good up-front policy that would eliminate the fiduciary responsibility that would come with a petition. The LPTV could be at a fiscal disadvantage in resolving the issue.

48. Although our expertise is not in defining facilities changes, we do feel strongly that non Class A and Translator modification applications could well fall under the same stipulations, but again with full protection of the Class a and full service stations.
49. We agree with each point recommended in this paragraph.
50. Displaced Class A LPTV must take precedence over other LPTVs when a modification is required for continuing quality service. The Act was implemented to give better and protected service to LPTV. These stations usually reach under-served niche audiences. An operator who did not apply for Class A status should be made to defend his reasons for not applying for permanent status, and should have to well substantiate any reasons that he or she feels that the status should be granted to them. Additionally, there seems to be no reason why a non Class A would have more displacement relief provisions than a Class A LPTV, since these properties will have a higher priority status.
- If a station is going to relocate it's antenna site, it should have to prove that it still covers the market it programs to, regardless of the distance of the move. The onus should be on the station to provide evidence of this that convinces the commission. An unavoidable loss of the site, should allow a new site application, with the above stipulations.
- Class A stations need priority in order to preserve their need fulfillment to the community. Not awarding such could defeat the purpose of the Act.

#### J. Other Technical Issues

51. *Television Channels for Class A Stations.* Stations on channels 52-59 operate under a presumption of displacement. Channels 51-59 and 60-69 that are up and operating, should be allowed to qualify for Class A status at this time. Those applicants for channels 51-69 that either have not been authorized, or are not as yet built out, should have to wait until all other displacements and power maximizations are resolved satisfactorily before they are considered to be granted Class A status.
52. *Section 337 of the Communications Act and Channels 60-69.* It would be difficult at this time to add to the traffic looking for channels below 52. It seems that we again need to clear the air, and be sure that we have space available after the higher priority stations have found a permanent site below channel 52. Address the issue, but do it later.
54. *Power Levels.* We have to agree with the Commissions stand on this point. It is well taken.
55. *Coverage Requirements.* We completely agree with the commission. Economics will force these stations cover their own markets as well as they can.
56. If the Commission is going to implement this, the subject station should have to prove that at least 75% of the station's contour must be over/into its target market. These



LPTVs were originally licensed to deliver programming to under-served niches, and it should be the job of the licensee to prove to the Commission that it continues to do so.

#### K. Remaining Issues

57. First issue...by definition, these are or will be Class A stations, not simply LPTVs. They should be referred to as what they are.  
Second issue...part 73 verification should continue to be adequate. Again, there doesn't seem to be any new issues that would require changing that.  
Third issue...These Class A LPTVs should be assessed fees as they have in the past in Section 9.

The real significant change that should come from this legislation should be the willingness of owners to put more money at risk in improved need fulfillment programming. This protection should greatly benefit the public, and the Commission is to be commended for being extremely diligent in implementing the legislation.